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FISCAL IMPACT STATEMENT

LS 6799

BILL NUMBER: SB 528

NOTE PREPARED: Feb 17, 2015

BILL AMENDED: Feb 16, 2015

SUBJECT: Preservation of Public Records.

FIRST AUTHOR: Sen. Miller Pete

FIRST SPONSOR: Rep. Lehman

BILL STATUS: As Passed Senate

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) *Various Changes Concerning Archives and Records Administration:* This bill changes the name of the state Commission on Public Records to the Indiana Archives and Records Administration. It changes the name of the central micrographics laboratory to the state imaging and microfilm laboratory. It adds and makes changes to terms to reflect changes in technology, materials, and processes. It also requires a county commission of public records to notify the administration within 30 days after selecting a chairman or secretary of the county commission.

Duties of the Indiana Archives and Records Administration: The bill specifies that the administration administers the law regarding preservation of public records for political subdivisions. It provides that the administration may maintain damaged court record books. It requires the administration, with the approval of the Oversight Committee on Public Records, to: (1) ensure that the state retains or recovers possession of records that were to be retained by the territorial government under territorial law or are to be retained by the state government under state law; and (2) advise the Office of Technology with respect to records management and archival principles as applicable to the purchase of electronic content and information management systems.

The bill authorizes the administration: (1) to sell or exchange records or nonrecord holdings that the administration does not need and is not required to maintain; and (2) to make and sell pictures, models, and other merchandise consisting of or containing reproductions of records and exhibits of the state archives. It requires money received from these sales to be deposited in the state Archives Preservation and Reproduction Account in the state General Fund.

Retention Schedules: The bill requires a state agency to submit a recommended retention schedule to the

administration (instead of to the Oversight Committee on Public Records).

Preservation of Public Records by Political Subdivisions: The bill provides that a political subdivision has the duties and responsibilities of a state agency under the law regarding preservation of public records.

Penalty Concerning Public Records: The bill provides, for purposes of the law making it a Level 6 felony for a public official to dispose of a government record other than in accordance with a record retention schedule or with the consent of the administration, that "public official" includes all officers of agencies of state or local government.

Certificates of Death: The bill provides that a certificate of death received by a local health department or the Indiana State Department of Health is a public record that, upon request, must be made available for inspection and copying if certain conditions are met. It authorizes the state registrar to deny a request to inspect or copy a record concerning vital statistics if the state registrar has a reasonable suspicion that releasing the record may result in fraud or identity theft.

Effective Date: July 1, 2015.

Explanation of State Expenditures: *Commission on Public Records:* This bill makes various changes and updates to the statutes governing the preservation of public records by government agencies. In most cases, the changes incorporate the current practices of the Commission on Public Records (renamed the Indiana Archives and Records Administration by this bill). Other requirements should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

State Agencies: The bill would also allow the Indiana Archives and Records Administration to establish a fee schedule for services provided to state agencies. However, a fee schedule would be subject to approval by the Oversight Committee on Public Records.

Penalty Concerning Public Records: The bill repeals the current Level 6 felony relating to local public records commissions and the destroying of government documents and provides a Level 6 felony for mutilating, destroying, selling, loaning, or disposing of all government records. A Level 6 felony is punishable by a prison term ranging from 6 months to 30 months or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The advisory sentence is one year. Level 6 offenders can receive good time credit of 50%. Consequently, Level 6 offenders can be released from prison after serving one half of the sentence.

The average expenditure to house an adult offender was \$19,497 in FY 2014. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,210 annually, or \$8.77 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$89,956 in FY 2014.

Explanation of State Revenues: *Fee Schedule for Services:* The bill would also allow the Indiana Archives and Records Administration to establish a fee schedule for services provided to state agencies and for patrons of the state imaging and microfilm laboratory. However, a fee schedule would be subject to approval by the Oversight Committee on Public Records. Revenue from fees would be deposited in the state Archives Preservation and Reproduction Account.

(Revised) *Sale or Exchange of Records or Nonrecord Holdings and Sale of Other Merchandise:* The bill

allows the Indiana Archives and Records Administration to do the following: (1) sell or exchange records or nonrecord holdings that are not needed; and (2) make and sell pictures, models, books, souvenirs, crafts, art, videotapes, digital video discs, and other merchandise consisting of images or reproductions of records in the state archives. Any revenue received from these activities would be deposited in the state Archives Preservation and Reproduction Account.

(Revised) *Certificates of Death*: The bill provides that death records maintained by the Indiana State Department of Health (ISDH) are public records. As a result, this bill could increase state General Fund revenue from vital record fees collected by the ISDH if the number of requests increases. Increases in revenue are indeterminable, but expected to be small.

The fee to search for public records maintained by the ISDH is \$8. There is no charge for the first certification of a record, whereas for each additional certification, the ISDH collects an additional \$4. Revenue received from vital record fees is deposited in the state General Fund. Between FY 2010 and FY 2014, all searches for vital records maintained by the ISDH yielded an average of \$360,000 in revenue to the state General Fund annually.

Penalty Concerning Public Records: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Level 6 felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. In addition, some or all of the automated record keeping fee (\$5), judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$2) are deposited into the state General Fund.

Additional Information - The state Archives Preservation and Reproduction Account is as an account within the state General Fund. Money in the account does not revert to any other account within the state General Fund at the end of the fiscal year, and is available for use in the preservation and reproduction of public records in the Indiana state archives.

Explanation of Local Expenditures: *Political Subdivisions*: Political subdivisions are currently required to comply with the retention schedules set forth by the Oversight Committee on Public Records. In general, the preservation of public records requirements in this bill for political subdivisions are requirements that they may be observing currently. The bill also requires a county commission of public records to notify the Indiana Archives and Records Administration within 30 days after selecting a chairman or secretary of the county commission.

Penalty Concerning Public Records: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Penalty Concerning Public Records*: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record.

Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$2), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

State Agencies Affected: Commission on Public Records; Department of Correction; Indiana State Department of Health; All.

Local Agencies Affected: Trial courts, local law enforcement agencies; All.

Information Sources: Ted Cotterill, Commission on Public Records, 317-232-3385; Indiana Sheriffs' Association, Department of Correction; Legislative Services Agency, *Indiana Handbook of Taxes, Revenues, and Appropriations*, FY 2014.

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